

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Anthony Carl McLeichey,

Petitioner,

v.

Jason Gunther,

Respondent.

No. CV-24-02364-PHX-JJT

**ORDER**

Before the Court is the Report and Recommendation (Doc. 16, “R&R”) entered by United States Magistrate Judge Debra M. Fine recommending that the Court dismiss without prejudice Mr. McLeichey’s Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (Doc. 1, “Petition”). In the R&R, Judge Fine advised that “the parties shall have 14 days from the date of service of a copy of this recommendation within which to file specific written objections with the Court.” (R&R at 13). Judge Fine further warned the parties that “failure to timely file objections to the magistrate judge’s report and recommendation may result in the acceptance of the report and recommendation by the district court without further review.” (R&R at 13.).

Judge Fine entered the R&R onto the docket and it was therefore deemed served on April 3, 2025. More than 2 months have since passed and Petitioner McLeichey has filed no objections. The Court is therefore authorized to accept the R&R without further review.

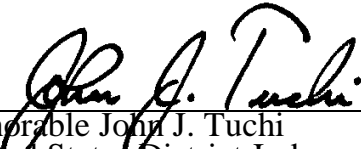
1 It nonetheless conducts a review on the merits, and after so doing, concludes that  
2 Judge Fine's recommendations are all soundly supported in law.

3 As Judge Fine notes in her R&R, where a petitioner does not exhaust administrative  
4 remedies and such administrative remedies remain available, "a district court ordinarily  
5 should either dismiss the petition without prejudice or stay the proceedings until the  
6 petitioner has exhausted remedies, unless exhaustion is excused." (R&R at 6 (internal  
7 citations and omitted.)) Here, Petitioner concedes, and the Bureau of Prisons records  
8 confirm, that Petitioner has failed to exhaust his administrative remedies. Indeed, it appears  
9 that Petitioner has made no attempt to avail himself of administrative remedies, urging  
10 instead that such efforts would be futile in this case. But the cases that he cites do not  
11 support an argument for futility in light of the facts here. The Court agrees with R&R that  
12 Petitioner's futility arguments are "conclusory and unpersuasive," and that, in any event,  
13 it would be more efficient to allow the Bureau of Prisons the opportunity to correct any  
14 errors through its multilevel administrative remedy process as established.

15 For all of these reasons,

16 **IT IS ORDERED** adopting the R&R filed by Magistrate Judge Fine (Doc. 16) in  
17 its entirety and dismissing without prejudice Mr. McLeichey's Petition for Writ of Habeas  
18 Corpus under 28 U.S.C. § 2241 (Doc. 1). The Clerk of Court shall enter judgment  
19 accordingly and terminate this matter.

20 Dated this 10th day of June, 2025.

21   
22 Honorable John J. Tuchi  
23 United States District Judge  
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